



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 7, 2007

The Honorable Judith Spang, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 319, relative to limiting the area of wetlands that a dredge and fill permit applicant may be required to create or restore.

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 319, which would limit the area of wetlands that a dredge and fill permit applicant may be required to create or restore as mitigation for dredging or filling of wetlands. The Department of Environmental Services (DES) opposes this bill.

HB 319 would effectively nullify the existing DES wetlands mitigation rules, Wt 803 Compensatory Mitigation Requirements, by establishing a ceiling for compensatory mitigation (a 1 to 1 ratio) that is well below the requirements of Wt 803 and standard industry practice. For creation or restoration, Wt 803 requires mitigation at a 1.5 to 1 ratio for most wetlands with ratios of up to 3 to 1 for more valuable wetlands. These standards were developed based upon sound science, considering research that has shown wetland restoration and construction to be difficult and typically not entirely successful. Ratios of greater than 1 to 1 reflect the need to consider uncertainty in successful functional replacement, as well as the temporal loss of wetland function during construction. In addition to restoration or creation, Wt 803 provides the option of compensation by preservation of upland buffers adjacent to wetlands at ratios that range from 3:1 to 15:1 based on wetlands value. We believe that these rules have worked well over the last 3 years to streamline permitting balanced with reasonable environmental protection and compensation for impacts.

The Wt 803 rules were adopted after a consensus building process of several years that involved a diverse group of stakeholders including representatives from the regulated community, conservation commissions, environmental groups, as well as state and federal agencies. Wt 803 represents a consensus as to the appropriate level of wetlands mitigation required for most projects when impacts cannot be avoided and provides clear, understandable criteria for wetlands mitigation requirements.

HB 319 would also put the New Hampshire wetlands program in conflict with federal wetlands mitigation requirements by setting state requirements at less stringent levels. The failure to be consistent with federal requirements would put New Hampshire's Programmatic General Permit (NHPGP) at risk upon expiration in June 2007. Under the NHPGP, most small projects are permitted by DES, but the U. S. Army Corps of Engineer audits all DES wetlands permitting actions. If a state statutory conflict with federal mitigation requirements were created or the NHPGP were not renewed, applicants with proposed federal wetlands impacts would also need to apply for an individual Corps permit and comply with federal compensatory mitigation requirements. The Corps permit process is generally much more lengthy and costly for applicants than the state process.

Legislation enabling a wetlands compensation program by the payment of monetary fees in lieu of the creation of new wetlands or the legal protection of nearby wetlands or uplands was passed in 2006. DES has since adopted interim rules and is scheduled to propose final rules for this program in March 2007. This provides another compensatory mitigation option for applicants.

In summary, we believe that the existing regulatory portfolio of options for wetlands compensatory mitigation is well thought-out, reasonable and has broad support. It should not be amended as proposed by HB 319 to decrease the protections that current law gives to the state's valuable wetland resources.

Thank you again for this opportunity to comment on this bill. Please feel free to call me at 271-3503, or Collis Adams at 271-4054, if you have any questions or need additional information.

Very truly yours,

A handwritten signature in black ink that reads "Thomas S. Burack". The signature is written in a cursive style. A large, red, stylized "X" is drawn over the signature.

Thomas S. Burack
Commissioner

cc: Representatives Camm and Weyler